

State of Hawaii  
Department of Land and Natural Resources  
Division of Conservation and Resources Enforcement  
Honolulu, Hawaii

May 8, 2009

Board of Land and  
Natural Resources  
Honolulu, Hawaii

RE: Request Board Approval to Renew a Cooperative Enforcement Agreement (CEA) between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, and the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), Office of Law Enforcement (OLE).

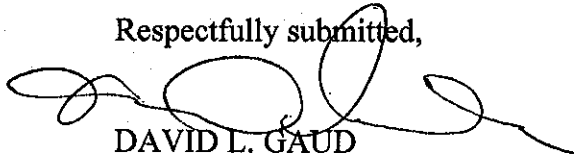
The purpose of this agreement is to delegate authority and powers to DOCARE Officers to perform the enforcement duties relating to the Federal Laws pertaining to Magnuson-Stevens Fisheries Conservation Act, Endangered Species Act, Marine Mammal Protection Act, Lacey Act and the National Marine Sanctuary Act.

This authority will be use in conjunction with any future Joint Enforcement Agreements with NOAA and NMFS /OLE.

RECOMMENDATION:

The Division of Conservation and Resources Enforcement recommends approval of this Agreement and asks that the Chairperson be authorized to sign the agreement provided that the Attorney General's Office first approve the content of the agreement or make substantive changes to the agreement in order to meet all State requirements.

Respectfully submitted,



DAVID L. GAUD  
Acting Enforcement Chief

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN, Chairperson  
Board of Land & Natural Resources

# **COOPERATIVE ENFORCEMENT AGREEMENT**

BETWEEN THE

**UNITED STATES DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL MARINE FISHERIES SERVICE  
OFFICE OF LAW ENFORCEMENT**

AND

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT**

FOR

**LAW ENFORCEMENT SERVICES UNDER THE  
MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT  
(16 U.S.C. §1801 et. seq.)**

AND

**ENDANGERED SPECIES ACT OF 1973  
(16 U.S.C. §1531 et. seq.)**

AND

**MARINE MAMMAL PROTECTION ACT OF 1972  
(16 U.S.C. §1361 et. seq.)**

AND

**LACEY ACT AMENDMENTS OF 1981  
(16 U.S.C. §3371 et. seq.)**

AND

**NATIONAL MARINE SANCTUARIES ACT  
(16 U.S.C. §1431 et seq.)**

This Agreement is entered into by and between the Secretary of Commerce, (Secretary), National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NOAA Fisheries), Office of Law Enforcement (OLE), and the State of Hawaii, hereafter, "State," Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, hereinafter referred to as the AGENCY.

**Whereas**, the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended, 16 U.S.C. § 1801 et seq., establishes a regime for managing certain fisheries in the exclusive economic zone (as established by Presidential Proclamation 5030, dated March 10, 1983) contiguous to the seaward boundary of each coastal state; and

**Whereas**, the Endangered Species Act of 1973 (ESA), as amended, 16 U.S.C. § 1531 et seq., and the Marine Mammal Protection Act of 1972 (MMPA), as amended, 16 U.S.C. § 1361 et seq., provide for the protection and conservation of endangered and threatened species and marine mammals; and

**Whereas**, the Lacey Act Amendments of 1981 (Lacey Act), 16 U.S.C. § 3371, et seq., provide restrictions on the trafficking of fish and wildlife taken and/or possessed in violation of state, Federal, Indian tribal, and foreign laws; and

**Whereas**, the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1431, et seq., provides for the designation of national marine sanctuaries areas of the marine environment which are of special national significance; and

**Whereas**, under 16 U.S.C. § 1861(a) (MSFCMA), 16 U.S.C. § 1540(e) (ESA), 16 U.S.C. § 1377(b) (MMPA), 16 U.S.C. § 3375(a) (Lacey Act), and 16 U.S.C. § 1437(h) (NMSA), the Secretary is specifically authorized to enter into, among other things, agreements with State agencies to utilize such personnel, services, equipment and other facilities of such State agencies as may be necessary to carry out the enforcement responsibilities of the MSFCMA, ESA, MMPA, and Lacey Act; and

**Whereas**, the AGENCY possesses law enforcement personnel, vessels, aircraft, vehicles, and other equipment and capabilities presently engaged in enforcing State conservation laws that could be used to assist the Secretary in carrying out the law enforcement responsibilities mandated by the Acts listed in this agreement; the parties do hereby agree to the following terms and conditions; and

**Whereas**, the authority to enter into this agreement has been delegated to the undersigned:

**NOW THEREFORE, IT IS MUTUALLY AGREED:**

**I. DELEGATION OF AUTHORITY AND POWERS**

- A. Those law enforcement officers who are members of the AGENCY, (hereinafter referred to as "Officers") and who are designated by the State as marine conservation

law enforcement officers, are hereby authorized to perform the duties of the Secretary relating to the law enforcement provisions of the MSFCMA, and any other marine resource authorized by the Secretary, including the ESA, MMPA, Lacey Act, and NMSA, and regulations promulgated there under. Enforcement shall be in compliance with directives established by the Secretary, and his or her designees.

- B. All Officers, while performing duties under this agreement and as otherwise provided below, shall possess the powers and authorities set forth in 16 U.S.C. §1861(b)(1) of the MSFCMA, and in the ESA, MMPA, Lacey, except as provided in paragraph (C) below, and NMSA.
- C. All Officers, while performing duties under this agreement, shall possess the authority to carry firearms as provided by the Lacey Act (16 U.S.C. §3375(b)), however, NOAA may at any time and for any reason, immediately revoke the authority to carry firearms.
- D. Those Officers who for any reason leave or are removed from service as members of the AGENCY will be simultaneously divested of authority conferred herein.
- E. Such officers shall not be held or considered employees of the United States for the purposes of any laws administered by the United States Office of Personnel Management.
- F. Such Officers shall not be compensated, salaried or otherwise reimbursed by the United States for any services performed or expenses incurred in the performance of such duties except as provided by this Agreement or pursuant to any grant, contract, or joint project entered into between the parties.
- G. Such Officers may be covered under 5 U.S.C. §8191-8193, Law Enforcement Officers Not Employed by the United States, for injuries sustained while enforcing Federal laws, provided that such injuries occurred under one of the circumstances enumerated in §8191. The Secretary of Labor will provide compensation for covered injuries enumerated in §8192. This coverage is intended to supplement rather than replace any State or local benefits otherwise payable.
- H. All Officers, while performing duties under this agreement, shall be considered to be (1) investigative or law enforcement officers of the United States for purposes of the tort claims provisions of 28 U.S.C. Chapter 171, and (2) officers or employees of the Department of Commerce within the meaning of 18 U.S.C. §§1111 and 1114.
- I. Such officers, while performing duties under this agreement, shall not have the authority to carry out any functions or responsibilities of the United States Government, except as provided in this Agreement.

## **II. RESPONSIBILITIES OF OFFICERS AND AGENCY**

- A. All Officers exercising authority under this Agreement shall submit written documentation of any action taken pursuant to this Agreement to the NOAA Fisheries Special Agent in Charge (SAC) for the Pacific Island Division, or the SAC's designee. Such documents shall include, but not be limited to, case investigation reports, a copy of any written warning or documentation of violation, and any supporting exhibits, affidavits, photographs or other evidence gathered. In addition, the State shall immediately notify the SAC or the SAC's designee of any arrest made as a result of any action brought under the Acts listed in this Agreement, and shall prepare and submit individual case investigation reports to the SAC on a timely basis.
- B. Any property, including cargo, fishing gear, vessels, fish or the fair market value thereof, seized under the authorities of the Acts listed in this Agreement shall be delivered to the United States Government official designated by the SAC or other appropriate Federal authority. If such official, however, cannot be contacted, employees of the State will be expected to make reasonable arrangements for the temporary care, handling, and preservation of seized property. Costs to third parties with whom arrangements are made under this paragraph shall be considered as separate items for payment by the Secretary, or his or her designee, and shall not be the responsibility of the State. The Secretary or his or her designee must determine that the costs are, in fact, reasonable under the circumstances before payment will be made.
- C. Officers will be made available, upon request by the appropriate Federal authority, to appear as witnesses in connection with any action brought with which they have an involvement. It is the responsibility of NOAA Fisheries to reimburse the Officers who appear in cases related to this Agreement for travel expenses and per diem (at rates authorized under the Federal Travel Regulations), for travel incurred while providing direct services to the Federal Government as a witness, in accordance with applicable Federal law.
- D. The State shall provide access to its law enforcement telecommunications network to NOAA Fisheries. Costs incurred in acquiring access to and using the State communications system shall be borne by NOAA Fisheries.
- E. No unilateral law enforcement action by the State with respect to foreign or stateless vessels for violations of Federal laws and regulations is authorized by this Agreement. If, however, foreign vessels are encountered, the State will immediately contact the appropriate United States Coast Guard District and/or NOAA Fisheries SAC or the SAC's designee and await instructions before seizing any vessels or making an arrest pursuant to Federal laws and regulations.
- F. Any arrest or seizure of domestic vessels contemplated by the State shall be reported as soon as possible to the appropriate United States Coast Guard District and/or NOAA Fisheries SAC or the SAC's designee, who, subject to the availability of appropriate personnel and units, will dispatch enforcement personnel to assist the Officers, or assist via radio or telephone communications when units are not available.

### **III. NOAA RESPONSIBILITY**

- A. To meet its law enforcement responsibilities under any of the Acts listed in this agreement, and consistent with the provisions of these Acts, NOAA Fisheries may execute contracts and other agreements with the State to provide funds in exchange for the use or services of the State's law enforcement personnel, vessels, aircraft, vehicles and/or other equipment. These contracts and other agreements shall be negotiated separate from this Agreement.
- B. NOAA Fisheries will provide training for the Officers in enforcement of the Acts listed in this Agreement with the length and location of the training to be agreed upon by the State. Training expenses will be borne by NOAA Fisheries.
- C. NOAA Fisheries will, at its discretion, grant a revocable license to the State to use NOAA Fisheries-purchased or excess (including seized) vehicles, vessels, and other operational equipment based upon the availability of such equipment. All property transferred will be on the basis of an executed Revocable License Agreement and receipt form. The revocable license is given to the State with the understanding that the property will be used only for the purposes contemplated in this Agreement. Costs incurred for the transportation, care, handling and preservation of said property transferred under this paragraph shall be considered as separate items for payment and will be the responsibility of the State. Liability for the property shall be governed by Section 6 of the Personal Property Management Manual, which provides that, except for reasonable wear and tear, the contractor (i.e., State) shall be liable for all loss, damage, or destruction of Government property.

### **IV. COMMITMENT BY THE STATE**

The State and the Secretary, and his or her designee, in managing the fisheries in their respective jurisdictions, agree to promote the adoption of conservation, management and enforcement measures and regulations which are complimentary, in accordance with, and to the extent authorized by the Acts listed in this Agreement and the Department of Land and Natural Resources Division of Conservation and Resources Enforcement statutes.

### **V. CONDITIONS AND TERMS OF AGREEMENT**

- A. This Agreement supersedes and replaces any previous Cooperative Enforcement Agreement between the parties, shall be effective for five (5) years from the date it is signed by all parties, and shall remain in effect until terminated by any party, after having given the other party 14 calendar days written notice. This agreement may be amended at any time with the mutual written consent of the parties. Participation in this Agreement by the Department of Commerce and NOAA Fisheries is, at all times, subject to the availability of funds.
- B. In no event shall this Agreement be interpreted to conflict with specific operating policies and procedures promulgated by any of the parties without the express oral or written

consent of an appropriate official of all the parties. In the event oral approval is given, it shall be reduced to writing at the earliest opportunity.

- C. This Agreement shall be construed to be consistent with the MSFCMA, ESA, MMPA, Lacey Act, NMSA, and regulations promulgated there under.
- D. Nothing herein is intended to conflict with NOAA or State directives. If the terms of this Agreement are inconsistent with such directives, those portions of this Agreement that are inconsistent will be invalid, but the remaining terms and conditions shall remain in full force and effect.
- E. Where the term "State" is used herein, the term shall be construed to include United States coastal territories and possessions.

## **VI. SIGNATURES**

**UNITED STATES DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL MARINE FISHERIES SERVICE  
OFFICE OF LAW ENFORCEMENT**

BY:

\_\_\_\_\_  
DALE J. JONES  
DIRECTOR

DATE: \_\_\_\_\_

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT**

BY:

\_\_\_\_\_  
LAURA H. THIELEN  
CHAIRPERSON, BOARD OF LAND AND NATURAL RESOURCES

DATE: \_\_\_\_\_